OLIVIA CHONG OI YUN v. PP

HIGH COURT SABAH & SARAWAK, TAWAU
ALWI ABDUL WAHAB J
[CRIMINAL CASE NO: TWU-42AC-1-3-2019]
25 OCTOBER 2019

CRIMINAL PROCEDURE: *Appeal – Appeal against conviction and sentence – Offence of driving while under influence of intoxicating liquor or drugs – Accused drove car at a fast speed and flung from one side of road to other side, killing four people and injuring one – Accused found guilty of two charges under s. 44(1)(b) of Road Transport Act 1987 – Accused sentenced to ten years' imprisonment and fine of RM20,000 for first charge and seven years' imprisonment and fine of RM19,000 for second charge – Imprisonment terms ordered to run consecutively – Whether conviction safe – Whether sentence manifestly excessive*

CRIMINAL PROCEDURE: *Sentencing – Principles – Appeal against sentence – Offence of driving while under influence of intoxicating liquor or drugs – Accused drove car at a fast speed and flung from one side of road to other side, killing four people and injuring one – Accused found guilty of two charges under s. 44(1)(b) of Road Transport Act 1987 – Accused sentenced to ten years' imprisonment and fine of RM20,000 for first charge and seven years' imprisonment and fine of RM19,000 for second charge – Imprisonment terms ordered to run consecutively – Whether ought to run concurrently – Whether sentence manifestly excessive – Whether sentence meted out in line with principles of sentencing*

ROAD TRAFFIC: *Accident – Reckless driving – Driving while under influence of intoxicating liquor or drugs – Accused drove car at a fast speed and flung from one side of road to other side, killing four people and injuring one – Accused found guilty of two charges under s. 44(1)(b) of Road Transport Act 1987 – Accused sentenced to ten years' imprisonment and fine of RM20,000 for first charge and seven years' imprisonment and fine of RM19,000 for second charge – Appeal against sentence and conviction – Whether conviction safe – Whether sentence manifestly excessive*

An accident happened within the vicinity of an area of shophouses known as 1 Arena. According to eyewitnesses, the appellant drove her car in a fast speed and flung from one side of the road to the far end of the parking bay of Arena 1. The appellant was charged with two charges under s. 44(1)(b) of the Road Transport Act 1987 ('Act') at the Sessions Court for driving while under the influence of intoxicating liquor or drugs and causing the death of four individuals ('first charge') and an injury of one ('second charge'). At the conclusion of the trial, the Sessions Court Judge ('SCJ') found the appellant guilty of both charges and (i) sentenced the appellant to (a) ten years' imprisonment and a fine of RM20,000, in default six months' jail for the first charge; and (b) seven years' imprisonment and a fine of RM19,000, in default six months' imprisonment for the second charge; and (ii) ordered (a) the terms of imprisonment for both charges to run consecutively; and (b) the

A disqualification of the appellant's driving licence for a period of ten years *ie* five years for each charge. Hence, the present appeal against the conviction and sentence. In support of her appeal, the appellant submitted that (i) the SCJ erred in fact and in law by accepting the evidence of the medical officer ('PW9') who took the blood specimen from the appellant without requiring
B the certificate to be produced by PW9, pursuant to s. 45F of the Act; (ii) the SCJ failed to conduct a maximum evaluation of all the evidence adduced during the trial. In his grounds of judgment, the SCJ used the words 'Having considered all these evidence …' instead of the words 'maximum evaluation' when he found the appellant guilty of the two charges; (iii) the *locus in quo*
C was not conducted according to guidelines. There was no record of questions posed to the witnesses but merely short notes of what was said and no cross-examination to witnesses during the *locus in quo*; (iv) there was no justification for the court, to accept the appellant's explanation that the road was uneven as erroneous, just because the appellant did not point out to the exact spot of which was said to be the uneven road and no statistics were ever
D shown that the said area was an accident-prone area; (v) relying on the case of *Farid Shah Mansour v PP* ('*Farid*'s case'), the SCJ failed to support his finding that the appellant was driving in such manner of her vehicle to sustain a conviction of the appellant; (vi) the prosecution did not tender the registration certificate of the appellant's car, as *prima facie* evidence of the
E registration card of the motor vehicle, which is a mandatory requirement under s. 117 of the Act; (vii) the jurisdiction under the Act shall fall within the jurisdiction of the Magistrate's Court, pursuant to s. 116A of the Act, and the SCJ did not specifically mention he was sitting as a Magistrate throughout the trial and neither did he state the reason why the charges were brought
F before him instead of before the Magistrate; (viii) the sentence of 17 years imprisonment, to run consecutively, was manifestly excessive based on the wrong principles of sentencing; and (ix) the sentence ought to be concurrent as the offences, which the appellant was charged with, were one of the same transaction.

G **Held (dismissing appeal against conviction; allowing appeal against sentence in part):**

(1) The production of the document signed and certified by PW9 was not required when PW9 was called as a witness to confirm and certify that the blood specimen was taken by him. The non-production of the
H certificate, under s. 45F of the Act, was not fatal to the prosecution's case and it would only be fatal if the person who took the blood specimen was not called as a witness. PW9, who took the blood specimen, was called and the SCJ was satisfied that the blood specimen was indeed taken from the appellant at the hospital. PW9's
I testimony, to account for the taking of the blood specimen from the appellant, was the best evidence rule as the evidence could be tested

and subjected to further examination. The production of the certified document was merely to confirm that the blood specimen was indeed taken by PW9 and this purpose could be achieved when PW9 came to court personally and testified on the same. (paras 34, 36 & 37)

(2) Although the exact words of 'maximum evaluation' were not used, the words to the like effect were mentioned in the SCJ's grounds of judgment. The SCJ also stated 'Having considered all these evidences …', which suggested that he had considered all the evidence given during the prosecution stage, as well as the defence stage, before he found that the appellant was guilty as per the two charges and subsequently convicted her. The SCJ had applied the correct principles of law in considering the facts and circumstances of the case. In coming to his decision, the SCJ had conducted a maximum evaluation of the evidence presented and found, at the end of the trial, that the appellant had no defence on merits. The conviction was safe. (paras 33 & 39)

(3) The issue of *locus in quo* was only raised during the appeal. There was no misdirection in the manner of how it was conducted by the SCJ as all procedures had been adhered to, among others, all the parties were in attendance including the appellant. Even though, there were no questions asked to the appellant during the visit, there were notes taken by the SCJ to record what he observed based on the evidence of the witnesses at the scene during the visit as appearing in the notes of proceeding. The conduct of *locus in quo* should be left at the discretion of the presiding trial judge so long as the interest of the appellant was safeguarded and if there was a new matter or new evidence that may arise at the scene, the parties were at liberty to examine and cross examine the same on their return to the court room. In the present appeal, there was no new evidence arising from the same visit as they were mere repetitions of evidence given by the same witnesses in court as to how the accident occurred. (paras 40 & 42)

(4) The appellant misconstrued the SCJ's judgment when she contended that it was erroneous for the SCJ to rule that there was no justification for the court to accept the appellant's explanation that the road was uneven. The judgment must be read as a whole. Although the SCJ did not point out to the exact spot said to be the uneven road and no statistics were ever shown that the scene of incident was an accident-prone area, what the SCJ really meant was that there was no correlation between the uneven road and the cause of accident. In fact, during the scene visit, the SCJ acknowledged the existence of the uneven road but was quick to say that the accident was, in no way, caused by the uneven road but due to the appellant's reckless driving. The car must have been driven at a fast speed by the appellant coupled

with the fact that she was driving under the influence of alcohol, causing her to lose control of her car, hit the road dividers, flung to the opposite lane and finally to the parking bay of 1 Arena, resulting in casualties and damage to the other cars. (paras 43- 45)

(5) *Farid*'s case concerned the offence committed under s. 44(1)(a) of the Act while in the present case, the appellant was charged under a different provision, namely s. 44(1)(b) of the Act, where there was no requirement for the prosecution to prove that the appellant was under the influence of intoxicating liquor to such extent as to be incapable of having proper control of her vehicle. For the purpose of the charge under s. 44(1)(b) of the Act, what required to be proven was (i) the appellant was the one driving the motor vehicle on a road or a public place and it was the motor vehicle which caused the whole accident; (ii) the alcohol level on the appellant's body exceeded the 'prescribed limit' under the law which was 80mg of alcohol in 100ml of blood; and (iii) the reckless driving of the appellant had caused the death of four persons and an injury to another person. (paras 46 & 47)

(6) There is nowhere in s. 117 of the Act that indicates nor implies that the registration certificate must be tendered in court. It merely explains that a registration certificate shall be *prima facie* evidence of registration of the motor vehicle referred. Such production of the motor vehicle was irrelevant to the present appeal as the charges against the appellant were in relation to the appellant being the driver of the car; not in relation to the appellant being the registered owner of the car or in relation to any other particulars of the same. There was no dispute that the appellant was the driver of the motor vehicle on the said road, as stated in the charge, and it was the said motor vehicle which caused the accident resulting in death and injury to the persons. The prosecution had also proven that the alcohol level in the appellant's blood exceeded the prescribed limit through a chemist report, which was sufficient for the purpose of the charge under s. 44(1)(b) of the Act. (paras 48 & 49)

(7) Since there are no clear wordings, under s. 116A of the Act, to give the jurisdiction of the Magistrate's Court to the exclusion of any courts to try and award full punishment for any such offence under the Act, the SCJ as well could have the jurisdiction to try the same and to mete out sentence according to the law. The appellant's complaint, that the SCJ did not specifically mention in the notes of proceedings that he was sitting as a Magistrate throughout the trial and that he did not state the reason why the charges were brought before him instead of before the Magistrate, was a non-starter. The present matter could be tried by the SCJ as he had competent jurisdiction. There was no objection

raised by the appellant then when the application for the transfer of the present case, from the Magistrate's Court to the Sessions Court, was made by the prosecution. To raise this issue now at the appellate stage was an afterthought. (paras 51 & 52)

(8) Section 44(1)(b) of the Act clearly prescribes that, upon conviction, the punishment shall be imprisonment for a term not less than three years and not more than ten years and to a fine of not less than RM8,000 and not more than RM20,000. Although the sentences passed by the SCJ were well within the ambit of the punishment provided for under the offending provision, such sentences passed did not show that the SCJ had applied the right principle of sentencing. The correct approach in sentencing is to strike a balance, as far as possible, between the interest of the public and the appellant's interest. The interest of justice also means the interest of the prisoners and, in the present appeal, the mitigation raised by the appellant ought to be considered and be tampered with justice as well. (paras 55, 56 & 59)

(9) To impose the maximum term of imprisonment was manifestly excessive. By imposing the maximum term of imprisonment, it was as if the SCJ had shut his ears to all mitigating factors raised by the appellant including the fact that this was the appellant's first offence and the commission was one without intention or not done deliberately to cause the loss of many lives and injury to a person. It was a very unfortunate incident and fated. It was purely an accident that was not foreseeable by anyone involved including the appellant. (para 58)

(10) The imprisonment term for the first and second charges were reduced to eight and six years, respectively, and ought to run concurrently as the offences in both charges arose from one single transaction. The monetary sentence imposed by the SCJ for both charges were not disturbed as they were within the range in accordance with the law. Furthermore, the appellant had also paid the fine. The order to disqualify the appellant from holding or obtaining a driving licence for such period, as ordered by the SCJ, was reaffirmed. By virtue of s. 44(2) of the Act, the particulars of conviction of the appellant was ordered to be endorsed on her driving licence after the expiry of the disqualification order. (paras 68-71)

Case(s) referred to:
Balachandran v. PP [2005] 1 CLJ 85 FC ***(refd)***
Farid S Shah Mansour lwn. PP [2018] 9 CLJ 92 HC ***(refd)***
Goh Ah San & Ors v. Rex [1938] 1 LNS 21 ***(refd)***
Johari Ibrahim v. PP [2002] 1 LNS 139 HC ***(refd)***
Nadarajah v. PP [2000] 4 CLJ 634 HC ***(refd)***
Parry v. Boyle (1986) 83 Cr App R 310 ***(refd)***
PP v. Jimmy Manju [2015] 5 LNS 66 SC ***(refd)***
PP v. Mohd Radzi Abu Bakar [2006] 1 CLJ 457 FC ***(refd)***
PP v. Sarjit Kaur Najar Singh [1998] 5 CLJ 609 HC ***(refd)***
R v. Cooksley and Ors [2003] EWCA Crim 996 ***(refd)***
R v. Marian Grondkowski and Henryk Malinowksi [1946] 1 All ER 561 ***(refd)***
Sundarshan Gopalkrishnan lwn. PP [2015] 10 CLJ 831 HC ***(refd)***

Legislation referred to:
Road Transport Act 1987, ss. 44(1)(a), (b), (2), 45F(3), 116A, 117

For the appellant - Ram Singh, Kimberly Ye; M/s Ram Singh Harbans & Co
For the respondent - Don Stiwin Malanjum; DPP

Reported by Najib Tamby

JUDGMENT

Alwi Abdul Wahab J:

Introduction

[1] This is an appeal by the appellant ("Olivia Chong Oi Yun") against the order of conviction and sentence given by the learned Sessions Court Judge ("SCJ") on 7 March 2019 for two charges both under s. 44(1)(b) of the Road Transport Act 1987 ("RTA").

[2] The two charges proffered against the appellant are as follows:

First charge

Bahawa, kamu pada 08/07/2018 jam lebih kurang 01.20 pagi di Jalan Chong Thien Vun hadapan Pusat Komersil BDC (1 Arena) di dalam daerah Tawau, di Negeri Sabah sebagai pemandu kenderaan Nombor Pendaftaran ST851X, mempunyai sebegitu banyak alkohol dalam badan kamu sehingga alkohol di dalam darah kamu melebihi had yang ditetapkan dan menyebabkan kematian kepada:

1) Hiew Nyuk Wei, L, 30 Tahun, Cina, Nombor Kad Pengenalan: 881218-49-5425

2) Clawence Wong Vun Kit, L, 21 Tahun, Cina, Nombor Kad Pengenalan: 971120-12-6903

3) Dicson Lim Kien Shing, L, 16 Tahun, Cina. Nombor Kad Pengenalan: 020425-12-0381

4) Chung Vui Chan, L, 21 Tahun, Cina, Nombor Kad Pengenalan: 970415-12-5495

dan oleh yang demikian kamu telah melakukan satu kesalahan yang boleh dihukum di bawah seksyen 44(1)(b) Akta Pengangkutan Jalan 1987 (Akta 333).

Second charge

Bahawa, kamu pada 08/07/2018 jam lebih kurang 01.20 pagi di Jalan Chong Thien Vun hadapan Pusat Komersil BDC (1 Arena) di dalam daerah Tawau, di Negeri Sabah sebagai pemandu kenderaan Nombor Pendaftaran ST851X, mempunyai sebegitu banyak alkohol dalam badan kamu sehingga alkohol di dalam darah kamu melebihi had yang ditetapkan dan menyebabkan kecederaan kepada 1) Chin Guan Xiong, L, 21 Tahun, Cina, Nombor Kad Pengenalan: 971112-12-6233 dan oleh yang demikian kamu telah melakukan satu kesalahan yang boleh dihukum di bawah seksyen 44(1)(b) Akta Pengangkutan Jalan 1987 (Akta 333).

[3] For the first charge, the appellant was sentenced to ten years imprisonment and a fine of RM20,000, in default, six months jail.

[4] For the second charge, the appellant was sentenced to seven years imprisonment and a fine of RM19,000, in default, six months jail.

[5] The learned SCJ also ordered the terms of imprisonment for both charges to run consecutively.

[6] The learned SCJ further ordered for the disqualification of the appellant's driving license for the period of ten years, ie, five years for each charge.

[7] On the 25 October 2019, I dismissed the appellant's appeal against conviction. However, I allowed the appellant's appeal in part against sentence.

[8] Accordingly, I set aside the sentence imposed by the learned SCJ and substituted it as follows:

(i) for the first charge, a sentence of eight years imprisonment.

(ii) for the second charge, a sentence of six years imprisonment.

(iii) the imprisonment terms for both charges are to run concurrently.

(iv) the particulars of conviction be endorsed on the appellant's driving license after the expiry of the disqualification order.

[9] The order by the learned SCJ to disqualify the appellant from holding or obtaining a driving license for such period as ordered is hereby affirmed.

[10] Likewise, the sentence of fine imposed by the learned SCJ for the two charges is also affirmed.

[11] Dissatisfied against my decision, the appellant filed an appeal.

[12] I shall now give my grounds of decision.

A

The Background Facts Of Case

[13] The facts of the case as summarised by the learned SCJ are as follows:

[5] In this case the accident happened within the vicinity of an area of shophouses known as 1 Arena in the early hours of the morning. The said accident was said to have happened at around 1.20am There are basically three witnesses who are PW1 – Raja Ibrahim Fikri bin Raja Abdullah Husni, PW2 – Mohamad Syahidan bin Mamat, and PW3 Encik Kamaludin bin Airf. First of all, I must emphasise that PW1 and PW2 were the nearest witnesses to the scene of the accident. Both of these two witnesses were the army personnel who were on duty on that night in question in the early hours of the morning of the 8th July 2018. They saw exactly how the accident have taken place because the roundabout and 1 Arena was quite close to the gates of the army camp which both men were guarding at that time. They testified that they saw how the car driven by the accused was driven in a fast speed and how it flung from one side of the road to the far end of the parking bay of 1 Arena. I had examined their evidence in totality and I could find that the car Toyota Vios driven by the accused was driven in a fast speed and had hit the road divider or "pembahagi jalan" on one side and landed far to the parking spaces of 1 Arena.

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[6] As to PW3, he testified that he heard a loud noise during the accident when he was among those police personnel taking part in a roadblock duty on the day in question which was the 8th July 2018 at about 1.20pm PW3 is a volunteer police personnel and he was assisting a few police personnel doing the roadblock. He could describe the accident vividly especially on how the car driven by the accused had flung from one road to the other road of the opposite lane and then to the parking spaces at 1 Arena.

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[7] The accused was immediately taken to the Tawau Hospital in an ambulance accompanied by Encik Kamaludin, a witness who was a voluntary policeman on duty. There were several eyewitnesses who were directly at the scene of the accident and who witnessed for themselves how the accident happened and also the impact of the accident. These witnesses are two army personnel who are PW1 and PW2, who were at sentry duty guarding the army base on that early morning and one volunteer police who was at one roadblock who saw the impact of the accident meaning when the accused car had flung from the roundabout to the side of 1 Arena.

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[8] The two military personnel saw the accused car had been driven at fast speed and had created a loud noise and had flung to the other side of the road at the parking space of 1 Arena. While I agree that the two army personnel could not possibly know the exact speed of the accused's car but this is not really important. From their testimonies, the car was driven in a fast speed until it flung to the other side of the road.

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[9] The prosecution also need to prove that the road in which the accident happened is a public road and in this respect, I rule that such road is indeed a public road in the absence of dispute or challenge by the defence.

[10] I now turn to the alcohol limits. The prosecutions' case rests on the fact that the accused blood samples were taken immediately after the accident albeit when the accused was brought to the hospital. The blood sample was taken by PW9, Dr Muhammad Noor Helmi bin Ibrahim and examined by PW10 who is an expert chemist. PW10 is Mohd Helmi Hussaini bin Dullah @ Mohd Rashid.

[11] From the analysis it was found to have contained 171mg of ethyl alcohol in 100ml. This prescribed limit is provided for under section 45G(1)(b) of the RTA. The said section states as follows:

... – prescribed limit\\ means

(b) 80 milligrammes of alcohol in 100 millilitres of blood;

The Findings Of The Learned SCJ

[14] The learned SCJ found that the prosecution had succeeded in proving each and every element of the charge which are as follows:

(i) that the accused was the one driving the said motor vehicle on a road or public place and it was the said motor vehicle which had caused the whole accident;

(ii) that the alcohol level in the accused's body had exceeded the "prescribed limit";

(iii) the limit allowed by the law is 80mg of alcohol in 100ml of blood; and

(iv) that the reckless driving of the accused had caused the death of four persons and the injury to another person.

[15] The learned SCJ found that the prosecution had therefore established a *prima facie* case against the accused and called the accused to enter her defence.

[16] At the conclusion of defence case and upon considering all the evidence, the learned SCJ found that the appellant was guilty as per the charges.

The Appellant's Grounds Of Appeal

[17] The appellant has 12 grounds of appeal as listed in her petition of appeal (encl. 22) but during the hearing of appeal, ground (h) was abandoned. The remaining grounds are as follows:

A (a) the learned Sessions Court Judge erred in fact and in law when His Honour stated the following, "They saw exactly how the accident have taken place because the roundabout and 1 Arena was quite close to the gates of the army camp which both men were guarding at that time. They testified that they saw how the car driven by the accused was driven in a fast speed and how it flung from one side of the road to the far end of the parking bay of 1 Arena. I had examined their evidence in totality and I could find that the car Toyota Vios driven by the accused was driven in a fast speed and had hit the road divider or "pembahagi jalan" on one side and landed far to the parking spaces of 1 Arena ...", yet such conclusive evidences through PW1, PW2 and PW3 were not adduced during the trial; as to such recklessness (if any) on the part of the appellant to cause death and/or injuries to the victims;

(b) the learned Sessions Court Judge erred in fact when His Honour took into consideration of the speed of the vehicle where in fact, no investigation was done on the speed of the vehicle involved in the accident and speed is not an issue under the charges;

(c) the learned Sessions Court Judge erred in fact and in law when His Honour failed to consider the evidence produced in court that showed that there was a break in the chain of evidence when the movement of the subject matter (the identity of the blood sample) has been greatly compromised and that it contravenes the law under s. 45F of the Road Transport Act 1987.

(d) the learned Sessions Court Judge erred in fact and in law when His Honour failed to consider that the chemist report P11 did not explicitly state only that the appellant blood showed 171mg ethyl alcohol in 100ml of blood and as such the appellant was intoxicated at the time of the accident;

(e) the learned Sessions Court Judge erred in fact and in law when His Honour did not rule or drew an inference that the level of alcohol of 171mg ethyl alcohol in 100ml of blood was conclusive to suggest that the appellant was intoxicated while she was driving and which she had thereafter caused the accident, except to hold as at para. 21:

> PW10 is a chemist attached to the Chemistry Department. Therefore this Court have heard his testimony and that is the only version of the expert evidence on the testing of blood samples to determine the level of alcohol in the accused body. In the absence of another chemist expert from the defence, I rule that the defence had failed to debunk the finding of PW10 that there were alcohol beyond the prescribed limit in the blood samples of the accused when it was tested.

(f) the learned Sessions Court Judge erred in law when His Honour failed to take into consideration that there was a break in the chain of evidence as the evidence used in court were tampered with prior to the completion of the IO's investigation;

(g) the learned Sessions Court Judge erred in law when His Honour failed to provide in his grounds of judgment as to his findings of a *prima facie* case made against the appellant where there was no evidence to support that the appellant's blood was actually above the prescribed limit of the law and that she was driving in such manner incapable of having proper control of her vehicle, which offends the standard and procedure set out in *Balachandran v. Public Prosecutor* [2005] 1 CLJ 85;

(i) the learned Sessions Court Judge erred in law and in fact when His Honour did not accept the appellant's defence that she lost control of her car due to uneven or unlevel road, despite visiting the scene of accident (as *locus in quo*) but held that:

> Para 50. But none of this was done. Even during the site visit to the scene of the accident, and the Court accompanied by the DPP and the defence counsel and other witnesses had proceeded to the scene. The accused did not point out to the exact spot of which was said to be the uneven road. However I do acknowledge that part of the road at the roundabout was quite uneven but again no statistics were ever shown by the defence throughout the trial that this area is an accident prone area. Therefore I rule that there is no justification for this court to accept the accused explanation that this road was uneven and it had caused the accused car to be thrown or out of control. Let me emphasise here that the two prosecution witnesses who are PW1 and PW2 testified that the accused was driving in a fast speed. Even though I rule that the estimate speed of 170km per hour by one prosecution witness could not be supported by anything but what these two witnesses saw were clear and simple *albeit* the accused was driving the car in a very fast speed and she hit the divider and flung to the other side of the road and finally to the parking bay at 1 Arena commercial area was purely due to her own fast reckless driving.
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> Para. 51. In this regard, I also rule that the reckless driving was caused by the amount of alcohol that the accused consumed as found by the chemist in the chemist report. The accused attempt to mislead the court by claiming that she only took one bottle of Guiness Stout is not reasonable and could not be true. The fact that she did not call any of her friends who were with her at the party at the pub and did not call the said customer of Perdana Club who was with her from 11.30pm means that these people never existed at all and the accused version in her defence was a made up story to defend herself.
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> Para. 52. Having considered all these evidences and having made those findings, I hereby find the accused guilty of the first and second charges against her and I convict her accordingly.

A (j) the learned Sessions Court Judge was wrong in calling upon the appellant to enter her defence on the present charges under s. 44(1)(b) of the Road Transport Act 1987;

(k) the learned Sessions Court Judge erred in fact and in law in failing to consider that on the totality of the evidence adduced during the trial, the
B decision and conviction made by His Honour against the appellant are not safe and it is against the weight of all evidences in respect of the appellant;

(l) the sentence imposed by the learned Sessions Court Judge was manifestly excessive when His Honour imposed a sentence of 17 years
C imprisonment (consecutively) and on the wrong principles of sentencing on the two charges against the appellant as the jurisdiction to try offences under s. 44(1)(a) of the Road Transport Act falls within the Magistrates' Court and not the Sessions Court.

D **The Appellant's Submissions Against Conviction**

[18] The appellant commenced the appeal with grounds ((c), (d), (e), (f), and (g)), and for these grounds, they were dealt with collectively.

[19] The appellant submitted that the learned SCJ had erred in fact and law when he accepted the evidence of the medical officer (PW9) who took the
E blood specimen from the appellant without requiring the certificate to be produced by the said medical officer pursuant to s. 45F(3) of RTA.

[20] The appellant further submitted that under s. 45F(3) of RTA it is a mandatory requirement for the government medical officer to produce the
F certificate to certify that the blood specimen was taken by the said government medical officer. To support her case on the statutory requirement of a document to be produced and certified by a government medical officer otherwise the prosecution case will fall short, the appellant referred to a Sessions Courts' case of *Public Prosecutor v. Jimmy Manju* [2015] 5 LNS 66.
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[21] Similarly, for grounds ((a), (b), (i), (j), (k)), they were dealt with collectively by the appellant. Under these grounds, the appellant submitted that the learned SCJ had failed to conduct a maximum evaluation of all the evidence adduced during the trial. The only time that the learned SCJ
H examined such evidence in totality is in reference to the evidence of PW1, PW2 and PW3 at para. 5, pp. 23 and 24 of the appeal records vol. 1.

[22] The appellant also referred to para. 52, p. 43 (appeal records vol. 1) of the learned SCJ's grounds of decision where he used the words "Having considered all these evidence …" instead of the words "maximum
I evaluation" when he found the appellant's guilty of the two charges contrary to the guidelines stipulated in the Federal Court's case of *PP v. Mohd Radzi Abu Bakar* [2006] 1 CLJ 457.

[23] The appellant submitted that the *locus in quo* was not conducted according to the guidelines stipulated in the case of *Public Prosecutor v. Sarjit Kaur Najar Singh* [1998] 5 CLJ 609 where Visu Sinnadurai J quoted the case of *Parry v. Boyle* (1986) 83 Cr App R 310 and held:

> ... The law governing the view of the *locus in quo* is as follows: (i) a view is part of the evidence; (ii) the judge must take a view in the presence of both parties; or both parties must be given the opportunity of being present; the only exception is where the judge goes to see some public place, eg the scene of a road accident; and (iii) the judge should not attend anything in the form of a demonstration or reconstruction in the absence of the parties.

[24] Under the same grounds, the appellant also submitted that the learned SCJ did not accept the appellant's defence that she lost control of her car due to uneven or unlevel road condition, despite the fact that the court visited and saw by itself the scene of the accident.

[25] The appellant pointed out that during the *locus in quo* on 22 October 2018, there was no record of questions that were posed to the witnesses but merely short notes of what was said and no cross-examination to witnesses during the said *locus in quo*. Hence, the learned SCJ's finding that there was no justification for the court to accept the appellant's explanation that the road was uneven is erroneous just because the appellant did not point out to the exact spot of which was said to be the uneven road and no statistics were ever shown by the defence throughout the trial that this area is an accident-prone area (para. 50 of the learned SCJ's grounds of judgment at pp. 41 to 42 of the appeal records vol. 1).

[26] The appellant under these grounds also submitted that the learned SCJ had failed to support his findings in his grounds of judgment that the appellant was driving in such manner to such an extent as to be incapable of having proper control of her vehicle to sustain a conviction of the appellant. To that, appellant relied on the case of *Farid S Shah Mansour lwn. PP* [2018] 9 CLJ 92 where Abu Bakar Katar PK (as he then was) held:

> [31] Pendakwaan telah pun memanggil SP8 (Dr Tan Chze Aun) dan SP12 (Abdul Jalil bin Abdul Rahman) untuk memberi keterangan. Pendakwaan gagal "elicit" keterangan daripada SP8 dan SP12, sama ada kandungan alkohol "154mg per 100ml darah" menyebabkan responden tidak upaya mengawal kenderaannya bagi maksud peruntukan s. 44(1)(a) Akta itu. Tuan Majistret itu dalam penghakimannya gagal menimbangkan persoalan undang-undang ini.

[27] Pursuant to ground of appeal (k), the appellant submitted that the learned SCJ had failed to consider on the totality of the evidence adduced during the trial, the decision and convictions made by him against the appellant were not safe as they were against the weight of all evidence in

respect of the appellant. For instance, the prosecution did not even tender the registration certificate of the appellant's car ST851X (as *prima facie* evidence of the registration card of the motor vehicle), which is a mandatory requirement under s. 117 of RTA.

[28] Pursuant to ground of appeal (l), the appellant submitted that the whole jurisdiction under Road Transport Act shall fall within the jurisdiction of the Magistrate's Court pursuant to s. 116A of RTA which reads.

> Notwithstanding anything contained in any written law to the contrary, a court of a First Class Magistrate shall have the jurisdiction to try any offence under this Act and to award the full punishment for any such offence.

[29] The learned SCJ did not specifically mention in the notes of proceeding that he was sitting as a Magistrate throughout the trial and neither did he state the reason why the charges were brought before him instead of before the Magistrate.

[30] It was the appellant's submission that the learned SCJ was motivated to punish the appellant to 17 years imprisonment, which is very severe and ought not to be consecutive. Further, it was also the appellant's submission that this is clearly a selective prosecution by the prosecutor to prefer both charges before the Sessions Courts solely to increase the punishment on the appellant as the Magistrate's jurisdiction to pass sentence is only up to five years imprisonment.

The Appellant's Submissions Against Sentence

[31] It was the appellant's submission that the sentence of 17 years imprisonment (consecutively) imposed by the learned SCJ was manifestly excessive based on the wrong principles of sentencing as the jurisdiction to try offences under s. 44(1) (b) of the RTA falls within the Magistrate's Court and not the Sessions Court.

[32] The appellant contended that the sentence ought to be concurrent as the offences with which the appellant was charged were one of the same transactions.

The Court's Findings

[33] As against conviction, I am satisfied that the learned SCJ had applied the correct principles of law in considering the facts and circumstances of this case. In other words, in coming to a decision, he had conducted a maximum evaluation of the evidence presented before him and found at the end of the trial, the appellant had no defence on merits. The conviction, in my view, is safe.

[34] I am in the agreement with the learned SCJ's view on the interpretation of s. 45F(3) of RTA that the production of the document signed and certified by a government medical officer is not required when the said government medical officer is called as a witness to confirm and certify that the blood specimen is taken by him.

[35] For ease of convenience, s. 45F(3) of RTA is reproduced below:

> Evidence in proceedings for an offence under ss. 44 and 45 involving intoxicating liquor and s. 45A.
>
> (3) A specimen of blood shall be disregarded unless it was taken from the accused by a government medical officer; and evidence that a specimen of blood was so taken may be given by the production of a document purporting to certify that fact and signed by a government medical officer.

[36] Further, in his grounds of judgment, the learned SCJ ruled on this issue which I fully subscribed that the non-production of the certificate under s. 45F(3) of RTA is not fatal to the prosecution's case and it would only be fatal if the person who takes the blood specimen is not called as a witness. In the present case, the government medical officer (PW9) who took the blood specimen had been called and the learned SCJ was satisfied that the blood specimen was indeed taken from the appellant at the hospital.

[37] The testimony of PW9 to account for the taking of the blood specimen from the appellant is the best evidence rule as the evidence can be tested and subjected to further examination. The production of the certified document is merely to confirm that the blood specimen is indeed taken by the government medical officer and this purpose can be achieved when the government medical officer came to the court personally and testified on the same.

[38] By way of extension on the issue, the learned DPP argued the use of the word "may" in s. 45F(3) of RTA suggests that the production of the certificate is a mere directory and not mandatory. In any event, its production is merely to give more strength to the already sufficient best evidence rule. In so far as the taking of the blood specimen by the government medical officer is concerned, it was required under the first limb of the provision as the word "shall" was employed to make such requirement mandatory or imperative to be fulfilled. I concur with the learned DPP on the above interpretation. The reliance by the appellant to the case of *Jimmy Manju* (*supra*) to support her proposition that the production of a certificate is mandatory otherwise it would render the blood specimen taken from the appellant to be disregarded could not be accepted in the circumstances of the present appeal. In *Jimmy Manju*'s (*supra*) case, which is rightly decided by the

learned SCJ sitting as a Magistrate that the prosecution had fallen short of proving its case because not only the certificate was not tendered in evidence, the government medical officer who took the blood specimen was also not called. This resulted in the break in the chain of evidence which caused the blood specimen taken from the accused to be disregarded.

[39] On the appellant's contention that the learned SCJ did not evaluate the evidence on maximum evaluation, I beg to disagree because although the exact words of "maximum evaluation" were not used but the words to the like effect were mentioned in the learned SCJ's grounds of judgment when he said "... I had examined their evidence in totality and I could find that the car Toyota Vios driven by the accused was driven in a fast speed and had hit the road divider or "pembahagi jalan" on one side and landed far to the parking spaces of 1 Arena" (para. 5, p. 24 of the appeal record vol. 1). It can be also seen at para. 52, p. 43 of his grounds of judgment when he stated "Having considered all these evidences" which suggests that the learned SCJ had considered all the evidence given during the prosecution stage as well as at the defence stage before he found that the appellant is guilty as per the two charges and subsequently convicted her.

[40] On the issue of *locus in quo* which was only raised during the appeal, I find that there is no misdirection in the manner how it was conducted by the learned SCJ as all the procedures had been adhered to, among others all the parties were in attendance including the appellant. There were no questions asked to the appellant during the visit. However, there were notes taken by the learned SCJ to record what he observed based on the evidence of PW1, PW3 and PW5 at the scene during the visit as appearing in the notes of proceeding at pp. 133 to 136 of the appeal record vol. 2(a).

[41] In the case of *Goh Ah San & Ors v. Rex* [1938] 1 LNS 21; [1938] 1 MLJ 95, Mc Elwaine CJ held:

> ... But I do not think it safe to lay down any rigid rule for the conduct of a view. Something must be left to the Magistrate's discretion and so long as everything said or done is said or done openly in the presence of the accused and his Counsel and is interpreted to the accused, if necessary, and so long as any new matter or new aspect arising during the view is tested by examination or cross-examination on return to Court there would be no irregularity in the trial nor would there be any ground for suspecting that justice did not appear to be done.

[42] I concede with the view expressed in the above authority that the conduct of *locus in quo* should be left at the discretion of the presiding trial judge so long as the interest of the appellant is safeguarded and if there is a new matter or new evidence that may arise at the scene, the parties are at liberty to examine and cross-examine the same on their return to the court room. In the present appeal, there were no new evidence arising from the

visit as they were a mere repetition of evidence given by the same witnesses in the court as to how the accident occurred. Even if I find that the observation and the notes that were taken by the learned SCJ during the visit is irregular, it does not change and affect the findings of the learned SCJ which is based solely on the evidence of the witnesses under oath during the trial and this is reflected in his grounds of judgment.

[43] On the appellant's contention that it was erroneous for the learned SCJ to rule that there is no justification for the court to accept the appellant's explanation that the road was uneven, in my view, the appellant had misconstrued the learned SCJ's judgment. The judgment must be read as a whole. Although the learned SCJ did mention that the appellant did not point out to the exact spot of which was said to be the uneven road and no statistics were ever shown that the scene of incident is an accident-prone area, what the learned SCJ really meant was that there was no correlation between the uneven road and the cause of the accident.

[44] In fact, during the scene visit, the learned SCJ had acknowledged the existence of the uneven road which is the basis of the defence by the appellant and the fact that the road is uneven is supported by the evidence of the prosecution witnesses. However, the learned SCJ is quick to say that the accident (the car was thrown off balance according to the defence) was in no way caused by the uneven road at Kubota roundabout but it was due to the reckless driving of the appellant through the evidence of the eyewitnesses namely PW1, PW2 and PW6 that the appellant was driving her car in a high speed. The learned SCJ was of the view that if it was true that the appellant was driving with a speed of only 90km per hour as claimed and even if the road was uneven, it would not be reasonable to believe that the car would be easily going out of control beyond the opposite lane to the parking bay which caused the tragic accident.

[45] Based on the appeal records, I agree with the learned SCJ's above findings that the car must be driven at a fast speed by the appellant coupled with the fact that she was driving under the influence of alcohol causing her to lose control of her car, hit the road dividers, flung to the opposite lane and finally to the parking bay of 1 Arena commercial area resulting in casualties and the damaged to the other cars. The evidence of the PUSPAKOM officer, DW2 confirmed that the extent of damage on the appellant's car was due to heavy impact (Q&A8, p. 530 of the appeal record vol. 2(c)). There is no other reasonable explanation for such extensive damage if it was not due to the fast and reckless driving of the appellant.

[46] With regard to the appellant's contention that the learned SCJ has not made a finding of law that the appellant was driving in such manner to such an extent as to be incapable of having proper control of her vehicle and cited the case of *Farid S Shah Mansour* (*supra*), such contention is utterly misplaced.

The cited case concerns the offence committed under s. 44(1)(a) of RTA whereas in the present appeal, the appellant was charged under different provision, ie, s. 44(1)(b) of RTA where there is no requirement for the prosecution to prove that the appellant was under the influence of intoxicating liquor to such extent as to be incapable of having proper control of her vehicle.

[47] What required to be proven for the purpose of the charge under s. 44(1)(b) of RTA as highlighted by the learned SCJ are: that the appellant was the one driving the said motor vehicle on a road or public place and it was the said motor vehicle which caused the whole accident; that the alcohol level in the appellant's body exceeded the "prescribed limit", the limit allowed by the law is 80mg of alcohol in 100ml of blood; and, that the reckless driving of the appellant had caused the death of four persons and injury to another person.

[48] This brings me to the issue as to whether the prosecution is required to tender the registration certificate of the appellant's car ST851X which according to the appellant is a mandatory requirement under s. 117 of RTA. With respect, I disagree as rightly pointed by the learned DPP that there is nowhere in this provision that indicates nor implies that the registration certificate must be tendered in court. It merely explains that a registration certificate shall be *prima facie* evidence of registration of a motor vehicle referred to therein.

[49] In my view, such production of the registration certificate of the motor vehicle is irrelevant to the present appeal as the charges against the appellant are in relation to the appellant being the driver of the car and not in relation to the appellant being the registered owner of the car or in relation to any other particulars of the same. In the present appeal, there was no dispute that the appellant was the driver of the said motor vehicle registration no. ST851X on the said road as stated in the charge and it was the said motor vehicle which caused the accident resulting in death and injury to persons. The prosecution had also proven that the alcohol level in the appellant's blood is exceeding the prescribed limit through exh. P11, a chemist report prepared by PW10 which is sufficient for the purpose of the charge under s. 44(1)(b) of RTA.

[50] The prosecution submitted that although s. 116A of RTA provides that the First Class Magistrate shall have power and jurisdiction to try any offence under this Act, it does not necessarily mean that the other courts are excluded. Further, the prosecution submitted that there is nothing under s. 116A of RTA that disallows any offence under the Act to be tried in any other court, other than before a First Class Magistrate. In support, the learned DPP referred to the case of *Nadarajah v. PP* [2000] 4 CLJ 634, where Augustine Paul J held that:

> Before deciding whether the jurisdiction conferred on the Magistrates' Court is exclusive to them it is necessary to bear in mind certain rules of construction in construing statutes that deal with the jurisdiction of courts. There is a rule of construction that the exclusion of jurisdiction of the courts is not to be readily inferred and that such exclusion must either be explicitly expressed or clearly implied ...

[51] Applying the above authority to the fact of the present appeal, since there are no clear wordings under s. 116A of RTA to give the jurisdiction of the Magistrates' Court to the exclusion of any other courts to try and award full punishment for any such offence under the Act, the learned SCJ as well could have the jurisdiction to try the same and to mete out sentence according to the law.

[52] The appellant complained that the learned SCJ did not specifically mention in the notes of proceeding that he was sitting as a Magistrate throughout the trial and neither did he state the reason why the charges were brought before him instead of before the Magistrate. This is a non-starter as the present matter can be tried by the learned SCJ who has the competent jurisdiction. There was no objection raised by learned counsel for the appellant then when the application for the transfer of the present case from the Magistrates' Court to the Sessions Court was made by the learned DPP. To raise this issue at the appellate stage is an afterthought.

[53] Based on the abovesaid reasons, the appeal against conviction is dismissed.

The Appellant's Appeal Against Sentence

[54] Whilst the appellant submitted that the sentence imposed by the learned SCJ was manifestly excessive, the prosecution, on the other hand, submitted that the sentence passed commensurate with the seriousness of the offence and the facts of the case and this court ought not to interfere with the sentence passed by the learned SCJ.

[55] In my view, although the sentences passed by the learned SCJ are well within the ambit of the punishment provided for under the offending provision, such sentences passed did not show that the learned SCJ had applied the right principle of sentencing.

[56] Firstly, s. 44(1)(b) of RTA clearly prescribed that upon conviction, the punishment shall be imprisonment for a term not less than three years and not more than ten years and to a fine of not less than RM8,000 and not more than RM20,000.

[57] Having found the appellant guilty, the sentences meted out by the learned SCJ are that:

First Charge:

- ten years imprisonment;
- fine of RM20,000 and in default six months, imprisonment;
- the appellant is disqualified from holding a driving license for five years.

Second Charge:

- seven years imprisonment;
- fine of RM19,000 and in default six months, imprisonment;
- the appellant is disqualified from holding a driving license for five years.

The imprisonment sentences are to run consecutively.

[58] In my view, although the learned SCJ has the discretion to impose a sentence of imprisonment between three to ten years, to impose a maximum term of ten years imprisonment is manifestly excessive. By imposing the maximum term of imprisonment as in the present appeal, it is as if the learned SCJ had shut his ears to all the mitigating factors raised by learned counsel in mitigation including the fact that this is the appellant's first offence and its commission is one without intention or not done deliberately to cause the loss of many lives and injury to a person. It was a very unfortunate incident and fated. It was purely an accident that was not foreseen by anyone involved including the appellant.

[59] It is trite law that the correct approach in sentencing is to strike a balance, as far as possible, between the interests of the public and the appellant's interests. The interest of justice also means the interest of the prisoners and in the present appeal, the mitigation raised by the appellant ought to be considered and be tampered with justice as well (see Lord Goddard LCJ in *R. v. Marian Grondkowski and Henryk Malinowksi* [1946] 1 All ER 561).

[60] Before the learned SCJ, the previous counsel for the appellant in the Sessions Court had prepared a written mitigation for the court's consideration as follows:

(i) the appellant is a first offender and has a good driving record;

(ii) the appellant comes from a family of four siblings and she is the eldest;

(iii) the appellant is married, with one kid aged four years old. She is now living separately from her husband since December 2017 and has taken care of the well-being of the child. She is also solely responsible to cater the needs of the child;

(iv) the appellant is the sole breadwinner of her family. Her parents are not working due to their old age and poor health condition. She has to cater to the daily expenses of her parents, son and grandmother who is currently staying with her and her family at Taman Millennium, Tawau;

(v) the appellant's son currently has severe tonsillitis. Tonsillitis is inflammation of the tonsils caused by bacterial or viral infection. A doctor from l-Care Clinic, Tawau suggested for the appellant's son to undergo tonsillectomy immediately;

(vi) the appellant's father was diagnosed with diabetes mellitus, hypertension, ischaemic heart disease and unstable angina. Ischaemic heart disease is a heart problem caused by narrowed arteries which could lead to heart attack. On the other hands, unstable angina is a chest pain caused by a reduced blood flow to the heart and occurs randomly or unpredictably on the heart system. It is a form of acute coronary syndrome and is a medical emergency;

(vii) the medical prescription for both the appellant's father and son are at the appellant's expense;

(viii) the appellant had taken measures to limit her alcohol intake around three hours before the accident happened;

(ix) the road at the Kubota roundabout was not in a good condition;

(x) during the period of investigation, the appellant had given her full cooperation to the police;

(xi) the accident does not only affect the deceased's family, but it also affects the lives of the appellant and her family and friends. She had to quit her job as an executive at Perdana Club due to pressure from the public and had to move out of Tawau to find another job. A job is of importance to her as she needs to support her family;

(xii) the appellant had also expressed remorse as to what happened and sought for an apology from the deceased's family before the honourable court.

[61] Before sentencing the accused, the learned SCJ in his grounds of judgment at para. 54 (p. 43 of the appeal records vol. 1) merely stated: "I have also considered the mitigation of the accused but above all I am duty bound to consider the matter of public interest". However, at pp. 622 to 625 of the notes of proceeding (appeal records vol. 2(C)), the learned SCJ had elaborated in further details on what he factored and considered in passing the sentence as he did on the appellant. This is what he said:

A Tertuduh telah didapati bersalah terhadap 2 pertuduhan setelah satu perbicaraan dijalankan dan mahkamah Mensabitkan tertuduh di atas kedua-dua kesalahan berkenaan. Di dalam memutuskan sesuatu hukuman mahkamah mengambil kira rayuan tertuduh, fakta kes dan kedapatan di dalam kes perbicaraan tetapi yang terutama sekali ialah faktor kepentingan awam. Mahkamah tidak boleh mengorbankan atau
B mengkompromikan terhadap isu kepentingan awam yang diwakili oleh pihak pendakwaraya disebabkan kepentingan awam dikaitkan dengan keadilan dengan sendirinya. Cuma setelah kepentingan awam barulah rayuan terhadap tertuduh dipertimbangkan.

Tertuduh merupakan seorang yang amat tidak bertanggungjawab
C disebabkan perbuatannya yang minum minuman alkohol sehingga mabuk dan melebihi had yang dibenarkan undang-undang. Sebenarnya kemalangan itu berlaku pada pukul 1.20 pagi di mana pada masa itu sebenarnya tidak dapat banyak kereta di jalan raya dan dalam kes ini ada 5 mangsa, 4 terbunuh dan seorang tercedera dengan teruk. Mahkamah ingin menyatakan di sini daripada 4 mangsa yang terbunuh, 3 mangsa
D tersebut terbunuh serta merta. Ini maknanya mereka sendiri tidak tahu daripada mana semasa mereka hidup dan mengapa mereka mati sebab ia berlaku dengan begitu cepat. Mangsa-mangsa ini berada di tempat parking yang sah dan bukan berada di jalan raya.

Mereka bukan memandu kenderaan tetapi berada di parking bay. Mereka
E tidak boleh menjangkakan kemalangan yang berlaku. Sesiapapun yang berada di parking bay akan berfikir yang mereka akan berasa selamat. Dan seorang mangsa yang mati bila tiba di hospital, dia sendiri pada pandangan mahkamah berasa terkejut yang amat sakit yang mana dia berada di parking bay boleh dilanggar oleh kereta dan akhirnya dia meninggal dunia. Dia pun tidak tahu apa yang berlaku dan apa sebabnya
F dia dilanggar. Dan seorang mangsa yang cedera yang aktif sukan mendapat kecederaan yang teruk dan dari seorang yang aktif dia menjadi seorang yang kurang upaya. Masa depan dia dan keseronokan dia untuk hidup dan kepuasan dia sebagai seorang yang kuat bersukan telah dirampas oleh tertuduh apabila tertuduh melanggarnya.

G Di dalam menjatuhkan hukuman mahkamah akan menjatuhkan hukuman yang mewakili kepentingan awam dan yang mengenali denyut nadi keluarga mangsa yang telah kehilangan anak dan kehilangan suami disebabkan kemalangan. Jika mahkamah tidak melakukan demikian maka mahkamah akan gagal melaksanakan hukuman.

H **[62]** Reading through the grounds of sentencing as appearing in the notes of proceeding, the learned SCJ had given the public interest as his most consideration, commenting the appellant of her irresponsibility act in causing the death of four persons and injury to another. The learned SCJ took into account the fate of the victims for they have the least expectation about the accident as they were not on the main road but at the designated area of
I parking bays. The learned SCJ also stated that the court must consider the

plight of the victims' family for the loss of their loved ones due to the accident and the sentence must reflect this. At no time that the learned SCJ ever discussed and analysed the many mitigating factors put up by the appellant apart from saying that he had considered them. As I have alluded to earlier, the court must strike a balance between the interests of the public and the interests of the appellant in passing the sentence but what is obvious in the instance case, the appellant's mitigation is wholly disregarded. Hence, he imposed the maximum imprisonment term of ten years for the first charge and seven years for the second charge to run consecutively.

[63] As for the current trend of sentencing for the offence under s. 44(1)(b) of RTA with which the appellant was charged, both the learned DPP and the appellant, unfortunately, did not produce any authorities to assist the court in passing the appropriate sentence.

[64] In *Sundarshan Gopalkrishnan lwn. PP* [2015] 10 CLJ 831, the High Court affirmed the sentence of four years imprisonment and a fine of RM10,000 meted out by the Magistrate against the accused for an offence under s. 44(1)(a) of the RTA for driving a car on the road under the influence of alcohol in such manner incapable of having proper control of her vehicle which had caused one person dead and injured another. The punishment for an offence under s. 44(1)(a) is similar to s.44(1)(b) under the RTA.

[65] In *Johari Ibrahim v. PP* [2002] 1 LNS 139; [2002] 6 MLJ 193, the High Court sentenced the accused (on appeal from the Magistrate's Court) to three years and a fine of RM8,000 for committing an offence under s. 44(1) of RTA, ie, driving a motor lorry under the influence of alcohol which caused the injury to one person.

[66] In the present appeal, I am fully aware that the accident had caused four persons died and one injured but the facts and nature of the offence in the present appeal does not involve any intent to injure as no one had expected the multiple deaths resulting from the accident.

[67] In *R v. Cooksley and Ors* [2003] EWCA Crim 996 where Lord Woolf CJ held:

> [19] Even where there is no reason to suggest that the defendant is knowingly putting more than one person at risk, the fact that the consequences of dangerous driving are particularly serious, for example, involving multiple deaths is a relevant factor as to the length of sentence. That is the view that will be taken by the public. However, we are certainly not suggesting that the sentence should be multiplied according to the number of persons who sadly lose their life. It is still necessary to regard the offender's culpability in relation to the driving as the dominant component in the sentencing exercise. While the sentence is increased to reflect more than one death the sentence must remain proportionate to the nature of an offence which does not involve any intent to injure.

[68] In the circumstances, I am minded to reduce the imprisonment term for both charges to eight years and six years respectively. I would not, however, disturb the monetary sentence imposed by the learned SCJ for both charges as they are within the range in accordance with the law. The appellant had paid the fine.

[69] I am also of the view that the imprisonment terms for both charges ought to run concurrently as the offences in the two charges arose from one single transaction.

[70] I would affirm the order to disqualify the appellant from holding or obtaining a driving license for such period as ordered by the learned SCJ.

[71] Finally, in addition to the above, by virtue of s. 44(2) of RTA, I shall also order the particulars of conviction of the appellant be endorsed on her driving licence after the expiry of the disqualification order.

[72] The appellant had applied for a stay against the sentence of this court which is granted with the amount of bail increased to RM10,000. All the other conditions of the bail are maintained pending appeal.